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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1961

No. [redacted] 17

CHARLES PAUL, Director of Agriculture of the State of California, and STANLEY MOSK, Attorney General, State of California,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Northern District of California, Southern Division.

AMICUS JURIAE REPLY MEMORANDUM OF CONSOLIDATED MILK PRODUCERS OF SAN FRANCISCO, INC. TO MEMORANDUM OF THE UNITED STATES IN RESPONSE TO APPELLANTS' JURISDICTIONAL STATEMENT

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INTEREST OF AMICUS CURIAE

In replying to the Solicitor General's Response to Appellants' Jurisdictional Statement, Consolidated Milk Producers of San Francisco, Inc., (hereinafter called Consolidated) adopts Appellants' Reply Memorandum, but without intending to minimize Appellant's reply as to Distributor regulation Consolidated

particularly replies to the Solicitor General's contention that the change in military procurement policy by the United States warrants a summary disposition of this case.

Consolidated's particular interest in this case has been set forth in its Amicus brief in support of Appellants' Jurisdictional Statement.

ARGUMENT

CLARIFICATION OF CONSTITUTIONALITY OF THE CALIFORNIA MILK ACT AS APPLIED TO PRODUCERS WHOSE MILK IS RESOLD TO FEDERAL GOVERNMENT IS AN IMPORTANT ISSUE

First, the Solicitor General's suggestion that this Court summarily remand the instant cause to the district court for a deletion of that part of the final order enjoining enforcement of minimum producer price regulation, if accepted, would leave the California Milk Stabilization Act under a cloud of unconstitutionality as to its application to producers whose milk is purchased by distributors for resale to the Armed Forces.

The unsettled state of the law in this situation would encourage distributors with Armed Forces contracts to pay producers for their milk less than the minimum price established by the Director of Agriculture for the State of California, pursuant to his authority under Sections 4143, 4204, 4230, 4246, 4247 and 4249 of the California Agricultural Code.[1] Efforts

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[1]California Milk Stabilization Act, Chapter 17, Division 6, California Agricultural Code.

of the California Attorney General to enjoin such violations would readily be met with a citation to the three Judge District Court's memorandum opinion that the California Milk Stabilization Act is unconstitutional in its application to producers whose milk is resold to the Armed Forces by distributors. While Consolidated recognizes that allowing the United States to amend its complaint with respect to producer price regulation and the deletion from the District Court's Order enjoining California's enforcement of minimum producer prices vitiates the precedent value of that Court's memorandum opinion, nevertheless this unanimous decision by three eminent Federal Judges will be resorted to for precedent, albeit indirectly[2] and possibly surreptitiously.

Secondly, and probably more importantly, the Solicitor General seeks this summary treatment of California producer price regulation on the basis of the United States' change in procurement policy. Thus, the Solicitor General proposes that California milk producers be subjected to the whim of some anonymous United States official, an official that himself may be changed momentarily. On an issue as impor-

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[2]See *Blatz Brewing Co. v. Collins* (1945) 69 Cal. App. 2d 639 for such indirect precedent value. Therein the Court states as follows:

"This section was before this Court in the case of *Adolph Coors Co. v. Corbett* (Cal. App.) 123 P. 2d 74. While that case is no longer authoritative, as a hearing was granted in the Supreme Court, and then the case was dismissed by the parties, its analysis of section 38e and its conclusion as to the effect of the language in that section, upon which defendants here base their entire case, are logical, persuasive and correct. . . ."

tant as the constitutionality of the California Milk Stabilization Act the State of California and the milk producers in California deserve something more stable than "change in procurement policy"; this proposed rationale for summary treatment of producer price regulation is similar to a railroad ticket—"good for this date and this train only."

CONCLUSION

Consolidated submits that in addition to the other important issues presented by Appellants, an issue of substantial importance still exists with respect to producer price regulation for California and all other States having milk stabilization acts, regardless of the United States change in procurement *policy*. A mere change in *policy* should not be the basis of depriving the State of California, its milk producers, and other interested States, of a determination by this Court so as to clarify the present confused legal status of producer price regulation occasioned by the District Court's decision below.

Dated, San Francisco, California,
January 2, 1962.

Respectfully submitted,
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